

SUMMARY ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Briggs Analyst: Marion Mann DeJong Bill Number: AB 1016

Related Bills: See Legislative History Telephone: 845-6979 Amended Date: 04/21/1999

Attorney: Pat Kusiak Sponsor:

SUBJECT: Confidentiality/Taxpayer Communications

DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended _____.

AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as introduced/amended _____.

☒ FURTHER AMENDMENTS NECESSARY.

DEPARTMENT POSITION CHANGED TO _____.

☒ REMAINDER OF PREVIOUS ANALYSIS OF BILL AS INTRODUCED February 25, 1999, STILL APPLIES.

OTHER - See comments below.

SUMMARY OF BILL

This bill would entitle a taxpayer to the same protections of confidentiality applicable to communications with respect to the tax advice given by any federally authorized tax practitioner, as the taxpayer would have to communications if the advising individual were an attorney. The privilege would apply in any noncriminal tax proceeding before the Franchise Tax Board (FTB), Board of Equalization (BOE) or Employment Development Department (EDD).

SUMMARY OF AMENDMENT

The April 21, 1999, amendments moved the new section from Part 32 of the Revenue and Taxation Code (RTC) to 21028, deleted references to Department of Motor Vehicles, changed "state authorized tax practitioner" to "federally authorized tax practitioner," and added an operative date.

The Background and current law discussion of Specific Findings in the department's analysis of the bill as introduced February 25, 1999, still apply. The remainder of that analysis is replaced with the following.

EFFECTIVE DATE

This bill would become effective on January 1, 2000, and apply to communications made on or after that date.

SPECIFIC FINDINGS

This bill would generally conform to the federal law; entitling a taxpayer to the same protections of confidentiality regarding communications, with respect to the tax advice given by any federally authorized tax practitioner, as the taxpayer would have for communications if the advising individual were an attorney.

Board Position:

<input type="checkbox"/> S	<input type="checkbox"/> NA	<input type="checkbox"/> NP
<input type="checkbox"/> SA	<input type="checkbox"/> O	<input type="checkbox"/> NAR
<input type="checkbox"/> N	<input type="checkbox"/> OUA	<input checked="" type="checkbox"/> PENDING

Department/Legislative Director Date

Johnnie Lou Rosas **5/5/1999**

A federally authorized practitioner would be any individual who is authorized under federal law to practice before the Internal Revenue Service (i.e., attorneys, certified public accountants and enrolled agents).

The privilege would apply in any noncriminal tax proceeding before FTB, BOE or EDD. The privilege would not apply to a written communication regarding a corporation's involvement in tax shelters.

Policy Considerations

This bill would raise the following policy considerations.

- The IRS has a program that oversees the activities of persons authorized to practice before it and can suspend or revoke that authority if the activities of the practitioner so warrant. Since California has no such relationship with those authorized to practice before the IRS, it may not be appropriate to extend the privileges to such individuals. Moreover, conforming to these federal licensing standards would also conform to individual suspension and revocation decisions made by the IRS and would, unless any conformity language provided otherwise, preclude affected state agencies from suspending or revoking an individual's practice authority for purposes of the confidentiality privilege added by this bill.
- California law is broader than federal law in that it allows any individual to represent another individual in FTB-related tax matters. Limiting the extension of the privilege to IRS authorized representatives would mean that taxpayers using CPAs and enrolled agents would receive the benefit of the privilege, but taxpayers using other representatives would not.
- In recent years, attorneys have become affiliated with accounting firms (as employees or principals) and the line between legal advice and that provided by accountants has blurred. This provision would afford CPAs the same privilege provided attorneys when discussing similar issues.

Implementation Considerations

While this bill would not significantly impact the programs administered by the department, it may increase costs of individual cases for taxpayers and the department due to disputes over whether the confidentiality privilege under this bill applies in a particular case.

Technical Considerations

Department staff is working with the author to resolve the following concerns.

- This bill would expand the attorney-client privilege in any noncriminal tax matter before FTB, BOE or EDD. However, this bill would expand the privilege by adding Section 21028 to the Revenue and Taxation Code (RTC), which is administered by FTB. This provision should be added to each

agency's Taxpayers' Bill of Rights to ensure that it applies to each agency.

- On page 2, line 31, "employer" should be "employee."

FISCAL IMPACT

Departmental Costs

This bill would not significantly impact the department's costs.

Tax Revenue Estimate

This would not impact state income tax revenues.

BOARD POSITION

Pending.